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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. <i>mt</i>
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EXAMINER
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ART UNIT	PAPER NUMBER <i>18</i>
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/205,297

Applicant(s)

Valkanas et al.

Examiner

Ivars Cintins

Art Unit

1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 22, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-47 is/are pending in the application.
- 4a) Of the above, claim(s) 29 and 36-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27, 28, and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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Prosecution before the Primary Examiner is hereby reopened. The final rejection dated June 20, 2001 is withdrawn, and the amendment filed October 22, 2001 has been entered. In view of Applicant's remarks presented in this amendment, it is agreed that 1,4-dichloromethyl-2,5-dimethylbenzene has been disclosed as a crosslinking agent, not a chlorinated solvent. Accordingly, claims 30, 31, 34 and 35 are hereby joined with claims 27, 28, 32 and 33 as reading on the elected invention and species. Claims 36-47 remain withdrawn from further consideration, as being directed to non-elected inventions; and claim 29 remains withdrawn from further consideration, as being directed to a non-elected species.

The amendment filed March 30, 2000 is again objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. Applicant is again required to cancel the new matter in the reply to this Office action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 27, 28 and 30-35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The limitation that the recited product is "macroreticular" (claim 27, line 1) is not supported by the disclosure originally filed, and hence constitutes **new matter**.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 27, 28, 30-32 and 35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Meitzner et al (U.S. Patent No. 4,297,220) or Vulliez-Sermet et al (U.S. Patent No. 3,979,287). Each of these references appears to disclose a product having all of the recited product limitations. Applicant should note that the manner in which a product is prepared

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(claims 30-32 and 35) is not a product limitation, and hence cannot be relied upon to patentably distinguish a product claim from a reference which discloses an otherwise identical product.

Claims 27, 28, 30-32 and 35 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Rosenbaum (U.S. Patent No. 5,460,792). Again, the manner in which a product is prepared cannot be relied upon to patentably distinguish a product claim from a reference which discloses an otherwise identical product.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 30-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meitzner et al, Vulliez-Sermet et al, or Rosenbaum. Should it be held that the manner in which the reference polymers are crosslinked affects their product properties, then it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ 1,4-dichloromethyl-2,5-dimethylbenzene as the crosslinking agent

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in any of the above noted references, since this material is a well known crosslinking agent. Also, the recited "Mc" value (claim 33), and the specific temperature at which the crosslinking is performed (claim 35) are not seen to materially affect the overall properties of any of the above noted reference polymers, or to produce any new and unexpected result; and are therefore deemed to be obvious matters of choice, insufficient to patentably distinguish these claims.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meitzner et al, Vulliez-Sermet et al, or Rosenbaum in view of Schwarz et al (U.S. Patent No. 5,017,436). Each of the primary references discloses the claimed invention with the exception of the specific polymer material employed. Schwarz et al discloses (col. 2, lines 20 and 41-42) that SEBS is a well known polymer material; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the SEBS of Schwarz et al for the polymer in any of the primary references, since this secondary reference SEBS is capable of functioning in the system of any of the above noted primary references in substantially the same manner as the polymer disclosed therein, to produce substantially the same results.

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Applicant's arguments filed October 22, 2001 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that the term "macroplegmatic" arises from an insufficient translation of the Greek term that corresponds to the English term "macroreticular". Applicant also points out that the term "macroreticular" is well known in the art as evidenced by the references of record. While it is agreed that the term "macroreticular" is well known in the art, Applicant has not demonstrated that this term is equivalent to the term "macroplegmatic" used throughout Applicant's original disclosure. Accordingly, Applicant's attempt to change "macroplegmatic" to "macroreticular", in the amendment filed March 30, 2000, constitutes new matter.

Applicant also argues that Meitzner et al, Vulliez-Sermet et al and Rosenbaum fail to disclose the claimed invention because none of these references teaches crosslinking a preformed polymer. This argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out, however, that the claims in this application merely call for a product "formed by crosslinking a polymer", which could occur during polymer formation, and do not require that the polymer be preformed prior to the crosslinking operation.

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Accordingly, these claims do not distinguish over the product of Meitzner et al, Vulliez-Sermet et al or Rosenbaum.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

The fax phone numbers for this art unit are: (703) 305-3599 for "Official" faxes after Final Rejection; (703) 305-7718 for all other "Official" faxes; and (703) 305-3602 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
November 5, 2001